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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Curry et al.

Application No.: 09/683,995 (CONF 2530)

Filed: 3/10/2002

Title: Email messaging program with built-in video and/or audio media recording and/or playback capabilities

Attorney Docket No.: 1049.002US1

Group Art Unit:
2155

Examiner:
Khanh Q. Dinh

Assistant Commissioner for Patents
Washington, D.C. 20231

REPLY BRIEF

This Reply Brief is in reply to the Examiner's Answer of September 21, 2005. This Reply Brief is organized to provide a "top-down" analysis of the issue that is the subject of the appeal – whether the prior art reference Budge (US Pat. No. 6,564,248) discloses the claimed invention of the pending claims 1-24 such that Budge anticipates the claimed invention under 35 USC 102(b). Specifically, a first section of this Reply Brief provides a "bird's-eye view" of the claimed invention vis-à-vis Budge, looking at both the claimed invention and Budge from a general, high level, to show how Budge does not anticipate the claimed invention. The second section of this Reply Brief provides a more detailed view of Budge, discussing how Budge is properly reasonably and broadly interpreted by one of ordinary skill within the art, which also buttresses Applicant's contention that Budge does not anticipate the claimed invention. Finally, the third section of this Reply Brief answers the Examiner's arguments in the Examiner's Answer of September 21, 2005, in detail, to show that these arguments incorrectly characterize Budge, such that Budge cannot be considered as anticipating the claimed invention.

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Bird's-eye view of the claimed invention vis-à-vis the 35 USC 102(b) reference

All of the claims have been rejected under 35 USC 102(b) as to Budge (6,564,248). In Applicant's Appeal Brief of April 11, 2004, Applicant noted that the claimed invention is particularly directed to a single computer program installed at a client (e.g., a computing device like a desktop or a laptop computer) that provides for both media-recording/message-composing capability *and* email message-transmission capability. Thus, claim 1 is directed to, for instance, "a first client having a first email messaging program installed thereon *on which a composing user composes a message and records media, the first email messaging program sending the message to a receiving user over the network.*" In other words, this single email messaging program permits the user to compose a message, such as an email message, and record media, such as audio and/or video, *AND* sends the message (with the recorded media) to another user. Therefore, at a very high level, the claimed invention is directed to a single computer program in which a user can record media, such as audio and/or video, compose an email message, and send the email message with that recorded media to another user.

Budge, however, teaches a different approach to allowing media, such as audio and/or video, to be recorded and sent within a composed email message to another user. Budge in particular uses two computer programs: one computer program records the media, and then uses another program to send the media in an email message to another user. For instance, Budge discloses that "the sending system PC 10 executes video e-mail software 50 *which provides for the creation of video e-mail messages and the transfer of those messages to a conventional e-mail client*, such as EUDORA PRO 3.0 from Qualcomm Inc., San Diego, Calif." (Col. 3, ll. 37-42) Thus, in Budge, what happens is that a user creates a video e-mail message within the video e-mail software 50, which is one computer program. The video e-mail software 50 then sends this message to a conventional e-mail client, like EUDORA, which is a second computer program, and which sends the video e-mail message to another user.

Therefore, whereas the claimed invention is limited to an "email messaging program . . . on which a composing user composes a message and records media, the first email messaging

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program sending the message to a receiving user over the network,” the functionality of this email messaging program in the claimed invention is split between two computer programs in Budge. The first computer program, the video e-mail software 50, allows a message to be composed and media to be recorded. The second computer program, the conventional e-mail client, then receives this message from the video e-mail software 50, and sends it to another user over the network. (It is noted that this conventional e-mail client is indeed not even part of Budge’s invention, and is rather an pre-existing, prior art e-mail client, like EUDORA, Microsoft OUTLOOK, and so on.)

This overall interpretation of what Budge teaches is supported throughout the disclosure of Budge. Budge discloses that “[t]he main software components of the video e-mail system are the video e-mail recorder 210 and the video e-mail player 220,” (col. 4, ll. 34-36), where for purposes of the composing side of an email message having recorded media, just the video e-mail recorder 210 is relevant. This “video e-mail recorder 210 receives as inputs video message data . . . , audio message data . . . , and user inputs from the keyboard The video e-mail recorder 210 also executes the Email client 270 and passes the video e-mail file to the Email client 270.” (Col. 4, ll. 36-43) That is, the video e-mail recorder 210 is one computer program, via which a user is able to compose an email message and record media like video and/or audio. This video e-mail recorder 210 then transfers or passes the email message, with the recorded media, to the Email client 270, which is another computer program, and which sends the message to another user over a network like the Internet. Indeed, the preferred embodiment of the video-email recorder 210 in FIG. 3 of Budge is described as having “[a] recorder manager 370 [that] coordinates the various recorder functions and interfaces with the Email client software residing on the PC.” (Col. 5, ll. 3-5) There are simply two computer programs in Budge to provide the same functionality that one computer program provides in the claimed invention. Without the email client software in Budge, such as EUDORA (or in a more current computing device, an email program like Microsoft OUTLOOK), there is no way for a composed email message with recorded audio and video to be sent to another user over a network.

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It is also worthwhile to examine Budge's claims to infer what Budge reasonably discloses. Claim 1 is directed to “[v]ideo email software” that comprises “software configured to provide review of the multimedia data, [and] *configured to launch an email program.*” (Col. 9, l. 61, through col. 10, line 17) Thus, this claim also shows that there are two relevant computer programs in Budge, the video email software that allows for multimedia data to be recorded, and an email program that actually sends an e-mail message with the recorded multimedia data. This is even more clear in claim 5 of Budge, which is directed to a “video e-mail system.” (Col. 10, l. 57) The system of claim 5 in Budge includes “video e-mail software which provides control for the review of said video data.” (Col. 10, ll. 59-62) More significantly, the system also includes “a processor which executes the video e-mail software *and an e-mail client to generate within the e-mail client at least one video e-mail message.*” (Col. 10, ll. 63-66) Thus, in Budge you have two computer programs to provide video-recording and email-transmission functionality: video e-mail software and an e-mail client, whereas in the claimed invention you have a single computer program to perform the same functionality.

Another clear indication that Budge uses two computer programs to perform the same functionality that the claimed invention provides with a single computer program is claim 19 of Budge. Claim 19 is directed to a method. (Col. 12, l. 39) The method “combin[es] an executable player with at least one of video data and audio data into a message file.” (Col. 12, ll. 42-43) The method then “selectively pass[es] the message file to an e-mail client for attachment to an e-mail.” (Col. 12, ll. 47-48) If only one computer program performed both message composition/media recording and message transmission in Budge, as in the claimed invention, then it would not make sense for the method of claim 19 to pass a message including the recorded media to “an e-mail client.” That is, if there is only one computer program in Budge, then this begs the question as to why the message is being passed to an e-mail client – and what “thing” is passing the message to the e-mail client. An e-mail client is a computer program. Another computer program in Budge, the video e-mail software, performs the method of claim 19, to

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compose a message and record media for the message, and then to pass this message to the e-mail client.

There really is just no reasonable way to interpret Budge such that it can be said that Budge teaches the utilization of a single computer program to permit a user to compose a message and record media for the message, as well as to send the message with the recorded media to another user over a network. At every step of the way, Budge teaches a first computer program – video e-mail software – passing a composed message with recorded media to a second computer program – an email client. Since the claimed invention is directed to a single computer program that provides certain functionality, whereas Budge teaches two computer programs over which this functionality is divided, Budge cannot anticipate the claimed invention.

More detailed analysis of Budge

Applicant next steps through the disclosure of Budge in detail, to describe in detail the most reasonable and broadest interpretation that Budge can be accorded by those of ordinary skill within the art. Upon conclusion of this detailed analysis, it should be apparent that Budge cannot anticipate the claimed invention. Furthermore, this detailed analysis is used later in this Reply Brief to show why the Examiner's interpretation of Budge in continuing to assert his rejection of the claimed invention in view of Budge is incorrect.

First, we will concentrate on the "sending side" of Budge, and thus will concentrate on the teachings of Budge that correspond to the first client of the claimed invention, which as has been described is directed to a single email messaging program being installed thereon that permits a user to compose a message and record media, and also that sends the message to another user over a network. In FIG. 1 of Budge, the analog of this first client of the claimed invention is the "video e-mail sending sub-system 2." (Col. 3, ll. 16-17) This video e-mail sending sub-system 2 includes "a PC 10." (Col. 3, l. 20) That is, the PC 10 is a computer, like a desktop computer, on which a user composes a message and records media, and sends the message to another user over a network.

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Now, the “sending system PC 10 executes video e-mail software 50 which provides for the creation of video e-mail messages and the transfer of those messages to a conventional e-mail client, such as EUDORA PRO 3.0 from Qualcomm Inc., San Diego, Calif.” (Col. 3, ll. 37-42) It is important to recognize that the PC 10, or sending client, thus has *two* computer programs installed thereon: the video e-mail software 50, which is shown in FIG. 1 in Budge, and a conventional e-mail client, which inexplicably Budge does not show in FIG. 1. Therefore, even from discussion of just the first figure in Budge, it is apparent that there are two separate computer programs in Budge, in contradistinction to the claimed invention.

In FIG. 2, Budge no longer makes reference of the video e-mail software 50, but rather “illustrates the preferred embodiment of the environment in which the video e-mail software for the sending sub-system 2 and receiving sub-system 4 resides, as shown in FIG. 2B.” (Col. 4, ll. 31-34) However, Budge goes on to say that “[t]he main software components of the video e-mail system are the video e-mail recorder 210 and the video e-mail player 220.” (Col. 4, ll. 34-36) Therefore, in the most reasonable interpretation of Budge, one of ordinary skill within the art is to conclude that the video e-mail software 50 of FIG. 1 is analogous to these “main software components” – “the video e-mail recorder 210 and the video e-mail player 220.” Because we have to this point concentrated on the composing and sending side of an email message with recorded audio and/or video media, the video e-mail recorder 210 receives the focus our attention for the remainder of this discussion.

The video e-mail recorder 210 of the video e-mail software 50 of Budge in FIG. 2B “receives as inputs video message data . . . , audio message data . . . , and user inputs from the keyboard driver 250.” (Col. 4, ll. 35-39) Thus, the video e-mail recorder 210 performs the message composing and media recording aspects of the claimed invention. However, the “video e-mail recorder 210 also executes the Email client 270 and passes the video e-mail file to the Email client 270.” (Col. 4, ll. 41-43) That is, *another computer program* in Budge, the Email client 270, then sends the composed message and the recorded media to another user over the network. The video e-mail recorder 210 of the video e-mail software 50 does *not* actually send

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the message to another user, in contradistinction to the claimed invention, in which the *same* computer program allows for message composition and media recording, and also sends the message to another user over the network.

That is, here is the proper way, as to one of ordinary skill within the art, to interpret the various computer programs disclosed in Budge. In FIG. 1, Budge discloses video e-mail software 50, but also notes that there is another computer program, a conventional e-mail client, in the system of FIG. 1. Next, in FIG. 2, Budge says that the “main software components of the video e-mail system are the video e-mail recorder 210 and the video e-mail player 220.” Applicant has proposed that the recorder 210 and the player 220 are part of the video e-mail software 50. However, FIG. 2 *also* discloses the Email client 270. The Email client 270 is a *separate computer program* than the video e-mail recorder 210/video e-mail player 220/video e-mail software 50. That is, there are at least *two* computer programs in Budge: the video e-mail software 50 (which may be construed as including the video e-mail recorder 210 and the video e-mail player 220), *and* a conventional Email client 270, such as EUDORA, OUTLOOK, and so on.

A logical question that may be asked is whether the video e-mail software of Budge can be reasonably and broadly interpreted by one of ordinary skill within the art to include the aforementioned Email client. The answer is no, for at least two reasons. First, Budge itself discloses that the video e-mail software is separate from “a conventional e-mail client,” insofar as the software “transfer[s]” messages to this email client program. (Col. 3, ll. 37-42) That is, it does not make sense for video e-mail software to “transfer” a message with recorded media to itself for sending to another user over a network. It only makes sense for the video e-mail software to be a first computer program, which then transfers a message with recorded media to a second computer program – the email client – for sending to another user over a network. Second, the email client is exemplarily disclosed in Budge as being “such as EUDORA PRO 3.0 from Qualcomm Inc., San Diego, Calif.” (Col. 3, ll. 40-42) EUDORA is a stand-alone and separate computer program. Budge does not make any disclosure as to “modifying” EUDORA so that it incorporates video recording functionality, but rather only makes disclosure of “passing”

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or “transferring” messages with recorded video to EUDORA. Therefore, the video e-mail software in Budge cannot be considered a single computer program that *includes* an email client, since the email client, such as EUDORA, is itself another computer program to which messages with recorded video are *transferred or passed* by the video e-mail software.

Finally, FIG. 3 of Budge is analyzed. FIG. 3 “shows a block diagram of a preferred embodiment of the video e-mail recorder 210.” (Col. 4, ll. 50-51) Now, the video e-mail recorder 210 in Budge has already been shown to be separate from the Email client 270. The Email client 270 is a separate computer program than the video e-mail software, of which the e-mail recorder 210 is a part. The video e-mail recorder 210 is described in Budge as including a “recorder manager 370 [to] coordinate[] the various recorder functions and interfaces with the Email client software residing on the PC.” (Col. 5, ll. 3-5) Thus, the recorder manger 370 of FIG. 3 is a part of the video e-mail recorder 210 of FIG. 2, which is itself best construed as part of the video e-mail software 50 of FIG. 1. Even in FIG. 3, then, Budge discusses how a component of the video e-mail recorder 210, the recorder manager 370, interfaces with another computer program, “the Email client software residing on the PC.”

At the end of the day, then, this is what Budge in detail discloses. In FIG. 1, Budge discloses video e-mail software 50, but essentially states in column 3, ll. 36-42 that this video e-mail software 50 is one computer program that is to transfer created video e-mail messages to another computer program, “a conventional e-mail client, such as EUDORA.” In FIG. 2, Budge discloses that the main software components of the video e-mail system include a video e-mail recorder 210 and a video e-mail player 220. (Col. 4, ll. 34-36) However, FIG. 2 also shows an Email client 270 – and Budge states that “the video e-mail recorder 210 . . . executes the Email client 270 and passes the video e-mail file to the Email client 270.” (Col. 4, ll. 41-43) That is, the e-mail recorder 210 is part of one computer program, like the e-mail software 50 of FIG. 1, and the Email client 270 is another computer program, like a conventional e-mail client such as EUDORA. Finally, in FIG. 3, Budge shows the video e-mail recorder 210 in detail, as including a “recorder manager 370” that “coordinates the various recorder functions and interfaces with the

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Email client software." (Col. 5, ll. 3-5) Thus, the video e-mail recorder 210 is part of one computer program, like the e-mail software 50 of FIG. 1, includes the recorder manager 370 of FIG. 3, and interacts with another computer program, like Email client software, such as the Email client 270, which may be a conventional e-mail client such as EUDORA.

Therefore, a detailed view of Budge discloses the utilization of two computer programs to perform the message composition, media recording, and message sending functionality that is performed by a single computer program in the claimed invention. Budge discloses a first computer program to provide message composition and media recording capability. In FIG. 1, this first computer program is video e-mail software 50, which in FIG. 2 may be considered as including the video e-mail recorder 210, which in FIG. 3 is described as including the recorder manager 370. Budge discloses a second computer program to provide message sending functionality. In relation to FIG. 1, this second computer program is described as a conventional e-mail client, such as EUDORA. In FIG. 2, this second computer program is the Email client 270. In relation to FIG. 3, this second computer program is described as the Email client software. At each step of the way, then, Budge discloses two computer programs to perform the functionality that the claimed invention provides for in a single computer program, such that Budge cannot anticipate the claimed invention.

Responses to Examiner's contentions

To conclude this Reply Brief, Applicant refutes some of the Examiner's contentions advanced in the Examiner's Answer to Applicant's Appeal Brief. That is, Applicant steps through the Examiner's argument, to show how the Examiner has incorrectly and improperly interpreted Budge to reach his conclusion that Budge anticipates the claimed invention. It will thus become apparent that between the two competing visions of what Budge reasonably and broadly discloses to those of ordinary skill within the art – Applicant's and the Examiner's – that the Examiner's view of Budge has constituent errors that causes it to depart from Applicant's view of Budge. Only *with* these errors in interpreting Budge, however, can Budge be considered as anticipating

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the claimed invention. Stated another way, if you peel away the Examiner's errors in interpreting Budge, you are left only with the conclusion that Budge cannot anticipate the claimed invention.

First incorrect statement

First, on page 12, the Examiner states that Budge teaches "a first client . . . having a first email messaging program (50 FIG.1)." However, this is incorrect. As has been stated above, Budge describes reference number 50 as "video e-mail software 50 which provides for the creation of video e-mail messages and the transfer of those messages to a conventional e-mail client, such as EUDORA." (Col. 3, ll. 37-42) The video e-mail software 50 is not itself an email messaging program, insofar as it transfers messages to a conventional e-mail client, such as EUDORA. Stated another way, it does not make sense for an email messaging program to transfer messages to "a conventional e-mail client" – if the video e-mail software 50 by itself can send email messages to other users over a network, then it would not have to transfer such messages to a conventional e-mail client, like EUDORA. Thus, the "video e-mail software 50" is not an email messaging program per se, because it cannot actually send messages to other users over a network, but rather employs *another computer program* – a conventional email client like EUDORA – to achieve this functionality.

This distinction is important, because it cuts to whether there is one computer program in Budge or two computer programs in Budge to perform the functionality of the claimed invention. The most reasonably broad way to interpret Budge in the eyes of one of ordinary skill within the art is to simply look at what Budge says as to the reference number 50. And, Budge describes reference number 50 as "video e-mail software" that communicates with another computer program, "a conventional e-mail client, such as EUDORA." Thus, it is important not just to gloss over what reference number 50 "is" and call it an email messaging program, because, by itself, the video e-mail software 50 of Budge cannot actually send email messages! Rather, it has to pass composed messages to another computer program, a conventional e-mail client, for transmission to another user over a network.

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Second incorrect statement

Second, also on page 12, the Examiner states that Budge teaches “a video email recorder (210 FIG.2B) . . . for sending . . . video email messages over the Internet (see FIGs. 1, 2B, col.4 lines 21-49).” However, this is incorrect. The video email recorder 210 does not actually send video email messages over the Internet. Rather, as has been described above, “[t]he video e-mail recorder 210 *also executes the email client 270 and passes the video e-mail file to the Email client 270.*” (Col. 4, ll. 41-43) Nowhere in Budge does Budge say that the video email recorder 210 actually sends email messages over a network like the Internet. The only thing Budge discloses is that the video email recorder 210 – or its constituent component, the recorder manager 370 – passes email messages to the Email client 270/Email client software residing on the PC. The reason to pass such email messages to an email client, like EUDORA, is so that the email client, which is another computer program, can send the email messages to other users over a network like the Internet. Thus, the “video email recorder 210” does not per se send video email messages over the Internet, but rather passes these email messages to *another computer program* – a conventional email client like EUDORA – to achieve this functionality.

This distinction is also important, because it also cuts to whether there is one computer program in Budge or two computer programs in Budge to perform the functionality of the claimed invention. As before, the most reasonably broad way to interpret Budge in the eyes of one of ordinary skill within the art is to simply look at what Budge says as to the video email recorder 210. And, Budge never actually says that the video email recorder 210 sends email messages over a network like the Internet. Rather, Budge says that the video email recorder 210, or its constituent recorder manger 370, passes an email message to the Email client 270/Email client software. Thus, it is important not just to gloss over this detail as to the video email recorder 210, because, by itself, the video email recorder 210 cannot actually send email messages over a network like the Internet. Rather, the video email recorder 210 has to pass composed

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messages to another computer program, a conventional e-mail client, for transmission over such a network.

Third incorrect statement

Third, on page 13, the Examiner states that "Budge teaches that each sub-station . . . has only an email program [i.e., an email message program (50 FIG.1)] which [is] also shown as a software (FIG.2B) for performing data multi-functions [sic] such as sending, recording, and receiving video email messages over the Internet." However, first, as to reference number 50 of FIG. 1, as has been described above, Budge actually discloses that the reference number 50 is a first computer program – video e-mail software 50 – which communicates with *a second computer program*, "a conventional e-mail client, such as EUDORA." (Col. 3, ll. 39-42) Therefore, there is no way you can accurately say that Budge teaches "only an email program" as to the reference number 50 of FIG. 1, because Budge itself describes the reference number 50 as being a kind of first computer program, video e-mail software 50, which communicates with a second computer program, a conventional e-mail client, to achieve the functionality of the claimed invention, which in contradistinction the claimed invention provides for in a single computer program.

Next, as to the "software" of FIG. 2B, the essence of the Examiner's argument here is that FIG. 2B "is" in totality the software 50 of FIG. 1 in Budge – that is, that the software of FIG. 2B is itself a single computer program. However, this does not make sense, for at least three reasons. First, stating that the software of FIG. 2B is a single computer program is inconsistent with Budge's own description of FIG. 2B. Budge does not describe FIG. 2B as being a single computer program. Rather, Budge states that "FIG. 2 illustrates the preferred embodiment of the environment in which the video e-mail software . . . resides, as shown in FIG. 2B." (Col. 4, ll. 31-34) Budge further states that "FIGs. 2, 2A-2C are a block diagram of the environment in which video e-mail software resides." (Col. 2, ll. 45-46) Thus, Budge does not state that the video e-mail software, which is one computer program in Budge, is represented by FIG. 2B. Rather,

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Budge states that FIG. 2B shows the *environment* in which this single computer program, the video e-mail software, resides. FIG. 2B specifically shows the *software environment* in which the video e-mail software resides, in that it shows the constituent components of the video e-mail software – the recorder 210 and the player 220 – within a software environment that also includes various drivers 240, 250, and 260, as well as the e-mail client 270 itself. (By comparison, FIGs. 2A and 2C show the *hardware environment* in which the video e-mail software resides.) The broadest and most reasonable interpretation of FIG. 2B in Budge is to simply look at what Budge says as to FIG. 2B – and Budge does not say FIG. 2B shows a single computer program. Rather, Budge explicitly says that FIG. 2B shows the *environment* – specifically the software environment – in which the video e-mail software of Budge resides.

Second, stating that the software of FIG. 2B is a single computer program is inconsistent with Budge's disclosure as to figures other than FIG. 2B. For instance, Budge discloses the video e-mail software 50 of FIG. 1 as being separate from a conventional e-mail client like EUDORA, as has been described throughout this Reply Brief. Now, FIG. 2B shows such an e-mail client 270. Therefore, the e-mail client 270 is not *part of* the computer program that is the video e-mail software 50 in Budge, but rather is a separate computer program. That is, the software of FIG. 2B is not in totality a single computer program, but rather *multiple computer programs*, including the e-mail client 270. To interpret otherwise is to interpret Budge inconsistently as to Budge's own statements, which discloses the utilization of a separate computer program, a conventional e-mail client like EUDORA, in accordance with video e-mail software to achieve email message composition, media recordation, and transmission.

Third, stating that the software of FIG. 2B is a single computer program is technically unsound and incorrect as to one of ordinary skill within the art. FIG. 2B includes various operating system components, such as various drivers, including a video graphics adapter driver, a keyboard driver, a SoundBlaster driver, a modem driver, and a network adapter driver. One of ordinary skill within the art most logically, and most broadly, would not interpret such drivers as being part of the same computer program as a video e-mail recorder and a video e-mail player,

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but rather as part of a different computer program – namely, the operating system of a computer. That is, it is unreasonable to say that one of ordinary skill within the art would encompass all the software depicted in FIG. 2B as part of a single computer program, such that the e-mail client 270 is part of the same computer program as the video e-mail recorder 210 is. One of ordinary skill within the art recognizes that drivers are part of one type of computer program, an operating system like Microsoft WINDOWS. They most definitely are not part of an “email messaging computer program.” For example, when you buy an email messaging computer program, like Microsoft OUTLOOK, you are buying a single computer program, which in FIG. 2B is the e-mail client 270. You are not buying any of the drivers 240, 250, and 260. These are already part of the operating system, like Microsoft WINDOWS, that is already installed on your computer. Stated another way, when you buy an email messaging computer program, like Microsoft OUTLOOK, you install this computer program in relation to another computer program already running on your computer, an operating system like Microsoft WINDOWS. It is the operating system that already has as portions thereof the various drivers of FIG. 2B. The email messaging computer program does not include these drivers!

To further support this argument, Applicant notes that Budge itself states that “[i]n addition to operating system software, the sending system PC executes video e-mail software 50 which provides for the creation of video e-mail messages and the transfer of those messages to a conventional e-mail client, such as EUDORA.” (Col. 3, ll. 37-41) That is, Budge here is disclosing three different computer programs: operating system software, video e-mail software, and a conventional e-mail client. One of ordinary skill within the art is thus most broadly going to interpret the “software” of FIG. 2B not as one single computer program, as the Examiner does, but rather is going to interpret the “software” of FIG. 2B as portions of these three different computer programs. The drivers, in other words, are part of the operating system software, the recorder and the player are part of the video e-mail software, and the e-mail client is represented by reference number 270 within FIG. 2B.

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Therefore, when the Examiner states that FIG. 2B of Budge shows a single computer program, he is incorrect. Budge itself describes FIG. 2B as an environment, not a single computer program. Interpreting FIG. 2B as a single computer program is also inconsistent with other disclosures of Budge. Finally, interpreting FIG. 2B as a single computer program is technically unsound to one of ordinary skill within the art.

Conclusion

As has been described above, Applicant believes that the pending claims are in condition for allowance, and requests that they so be allowed. Budge at a most general level does not disclose combining the functionality of the claimed invention within a single computer program, as is accomplished within the claimed invention. Rather, Budge separates the functionality of the claimed invention over at least two computer programs. Furthermore, the Examiner's interpretation of Budge is incorrect, and it is only this incorrect interpretation of Budge that can support anticipation of the claimed invention by Budge.

Respectfully Submitted,



11-18-2005

Date

Michael Dryja, Reg. No. 39,662
Attorney/Agent for Applicant(s)

Michael Dryja, Esq.
Law Offices of Michael Dryja
704 228th Ave NE #694
Sammamish, WA 98074

tel: 425-427-5094
fax: 425-563-2098